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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,968	09/20/2006	Vincent George McCarthy	1000035-000071	5903
21839	7590	12/09/2008	EXAMINER	
BUCHANAN, INGERSOLL & ROONEY PC			SWINEHART, EDWIN L	
POST OFFICE BOX 1404				
ALEXANDRIA, VA 22313-1404			ART UNIT	PAPER NUMBER
			3617	
			NOTIFICATION DATE	DELIVERY MODE
			12/09/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/574,968	MCCARTHY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ed Swinehart	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 August 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-14, 16-30 and 32-63 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-14, 16-30 and 32-63 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/7/2008 has been entered.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plurality of closed or closable ballast tanks, and the means for providing closability, and the means for ballasting must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. Claim 57 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must refer to other claims in the alternative only. In this instance, such is dependent upon both claims 1 and 55. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

4. Applicant is advised that should claim 61 be found allowable, claim 63 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim.

See MPEP § 706.03(k).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3,9,11,16-18,20,24-28,44,48 and 52-56,58 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Manning.

Manning discloses the claimed invention, including a pair of suspended circular in cross-section ballast tanks, each having fins **17,19** positioned thereon. Such contribute to the stability of the craft in heavy seas.

Re claim 53, “to restrict” is an intended use, carrying no weight in the claims. It should be noted however that the fins of Manning are inherently capable of the stated function.

Re claim 58, “elongate flexible” fails to define over the arms **15** of Manning, and all materials possess some degree of flexibility. Furthermore, such fails to define over arms which provide the flexibility of multiple positioning.

Re “saddles”, such fails to define over the structure pivotally supporting the arms.

Re claim 27, such a condition is met in the figure 3 orientation.

7. Claims 1-12,16,25-28,32,41-43,55,56 and 58-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Gruber.

Gruber discloses the claimed invention, including four stabilizing closable ballast tanks **22** suspended from the four corners of a vessel.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 13,14,19,21-23,29,30,32-43,45,46,49-51 rejected under 35 U.S.C. 103(a) as being unpatentable over Manning.

The size and volume of the tanks of Manning, as well as the shape thereof is considered to have been an obvious design consideration, well within the level of skill of the ordinary routineer working in the art, providing expected results.

10. Claims 1-3,9-14,16,19-30,32-43,55,56 and 59-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poldervaart in view of Japan '681.

Poldervaart discloses the field of the invention, including the suspension of a pair of weights from opposite sides of a vessel. Poldervaart fails to disclose such weights including a closable ballast tank.

Japan '681 teaches a suspended weight, such including a closable ballast tank to permit ease in retrieval.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide closable ballast tanks to the weights of Poldervaart as taught by Japan '681.

Such a combination would have been desirable so as to provide for ease in handling and transport of the weights.

The size and volume of the tanks of Poldervaart, as well as the shape thereof is considered to have been an obvious design consideration, well within the level of skill of the ordinary routineer working in the art, providing expected results.

11. Claims 13,14,19-24,29,30,35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gruber.

The size and volume of the tanks of Gruber, as well as the shape thereof is considered to have been an obvious design consideration, well within the level of skill of the ordinary routineer working in the art, providing expected results.

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-6688. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ed Swinehart/

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Primary Examiner  
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